



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 5, 1993

Mr. Gary W. Smith
City Attorney
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

OR93-588

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ Your request was assigned ID# 21214.

The City of Galveston (the "city") received an open records request for certain records relating to the shooting death of Wendell Baker, Jr. Specifically, the requestor seeks 13 categories of information, including, *inter alia*, witness statements, grand jury testimony, witness information, certain personnel records, medical and psychiatric records, certain photographs and video tapes, and investigation records. You contend that the city may withhold all of the requested information under section 552.103(a) (former section 3(a)(3)) of the act. You also claim that portions of the requested information are excepted from required public disclosure by sections 552.101, 552.108, 552.111, and 552.117 (former sections 3(a)(1), 3(a)(8), 3(a)(11), and 3(a)(17)).

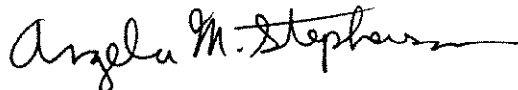
To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a); the requested records may therefore be withheld.

¹We note that the Seventy-Third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) (former section 3(a)(3)) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). As we resolve this matter under section 552.103(a) of the act, we need not address the applicability of the other claimed exceptions at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Angela M. Stepherson
Assistant Attorney General
Open Government Section

AMS/GCK/rho

Ref.: ID# 21214
ID# 21294
ID# 21735

Enclosures: Documents submitted

cc: Mr. Fred Wilson
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(w/o enclosures)